IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1097 OF 2006
IN
APPEAL NO.812 OF 2004
IN
NOTICE OF MOTION NO.491 OF 2004
IN
ARTIBRATION APPEAL NO.1 OF 2004

Jasmat Sheta ....Appellant
V/s.
Global Infrastcture And Technologies Ltd. & Ors. ....Respondents
And
Global Infrastcture And Technologies Ltd. & Ors. ....Applicant
V/s.
Vinod Dave & Anr. ....Respondents

Ms.Deepa Kamat i/b Mrs.Sujata Naik for the Applicant.
Mr.V.G. Mehta for Respondent Nos.1 and 2.
Mr.Uday Warunjikar for the Intervenor.

CORAM : DR.S. RADHAKRISHNAN & S.J. VAZIFDAR, JJ.
DATED : 27TH APRIL, 2006.

P.C. :

1. Heard the learned counsel for the Applicant, the learned counsel for the Appellant and the learned counsel for Respondent Nos.1 and 2.

2. By this Notice of Motion, the Applicant is seeking the following reliefs :-

"a) That this Hon'ble Court be pleased to

direct the Respondents to take possession of the flat No.502 in the building known as GURUSMRUTI in Swastik Cooperative Housing Society situate at Plot No.58, J.V.P.D. Vile Parle (West), Mumbai-400 056 pursuant to Clause 9(d) of the Order in terms of Consent Minutes of Order dated 13th April, 2005 passed by this Hon'ble Court.

b) That this Hon'ble Court be pleased to direct the Court Receiver, High Court Bombay to handover the possession of the flat Nos.301, 302, 401, 402 & 501 to the respective Owners thereof pursuant to Order in terms of Consent Minutes of Order dated 13th April, 2005 passed by this Hon'ble Court.

c) That this Hon'ble Court be pleased to discharge the Court Receiver, High Court Bombay in the respect of the flat Nos.301, 302, 401, 402 & 501 pursuant to the Order in terms of Consent Minutes of Order dated 13th April, 2005 passed by this Hon'ble Court".

3. As far as prayer clause (a) is concerned, Mr.Mehta, the learned advocate for Respondent Nos.1 and

2 very categorically states that Respondent Nos.1 and 2 will not take possession of flat No.502 in the manner in which it is sought to be handed over, in the sense that Respondent Nos.1 and 2 will not take possession unless there is a completion certificate and a transfer deed. Under these circumstances in view of the refusal by Respondent Nos.1 and 2, we cannot compel Respondent Nos.1 and 2 to take possession of the flat No.502, though the Appellant is ready and willing to hand over possession of the said flat No.502, but Respondent Nos.1 and 2 are not taking possession of the same.

4. As far as prayer clauses (b) and (c) are concerned, the Applicant has no objection for the same. In the circumstances, the Notice of Notice of Motion is made absolute in terms of prayer clauses (b) and (c). The Notice of Motion stands disposed of.

(DR.S. RADHAKRISHNAN, J.)

(S.J. VAZIFDAR, J.)